

**LETTER OPINION
2002-L-26**

May 2, 2002

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking if special education strategist credential rules required by N.D.C.C. § 15.1-18-05 are subject to the objection and delayed implementation procedures of N.D.C.C. § 15.1-32-23.

Special education strategist credentials are dealt with in the following two sections of law.

In addition to any other credential, the superintendent of public instruction shall implement a special education strategist credential, effective August 1, 2001. Any individual who obtains a special education strategist credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the areas of mental retardation, emotional disturbance, and specific learning disabilities.

N.D.C.C. § 15.1-18-05.

Beginning August 1, 2001, upon application the superintendent of public instruction shall issue a provisional special education strategist credential to any individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and who holds a credential applicable to the areas of mental retardation, emotional disturbance, or specific learning disabilities. The provisional credential must be made available to the individual for the lesser of three years or the period of time required by the individual to complete the requirements for a special education strategist credential.

N.D.C.C. § 15.1-18-06.

With respect to special education teacher credentials, and changes to the credentialing process, N.D.C.C. § 15.1-32-23 provides as follows:

The superintendent of public instruction may not change the credentialing process for special education teachers as it is in effect on July 1, 2001, without first convening a meeting to include representatives of the North Dakota council of education leaders, the council of exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, the applicability of the proposed changes, including the scheduling, the manner of implementation, associated costs, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the proposed changes before July 1, 2003.

N.D.C.C. § 15.1-32-23.

It is apparent that the terms of N.D.C.C. §§ 15.1-18-05 and 15.1-18-06, through the use of the word “shall,” require the superintendent of public instruction to implement the special education strategist credential and the correlative provisional credential. This requirement is directly contrary to the “may not change” language in the general prohibition on special education credential modifications in N.D.C.C. § 15.1-32-23.

Where a general provision such as N.D.C.C. § 15.1-32-23 conflicts with a special provision such as N.D.C.C. § 15.1-18-05 the two must be construed to give effect to both if possible. N.D.C.C. § 1-02-07. However, because both N.D.C.C. §§ 15.1-18-05 and 15.1-32-23 cannot be accomplished simultaneously if objections are raised under the latter section, they are irreconcilable and the special provision must prevail and be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail. N.D.C.C. § 1-02-07. City of Bismarck v. Fetting, 601 N.W.2d 247, 252 (N.D. 1999); State v. Koniarski (Matter of Estate of Tuntland), 364 N.W.2d 513, 516 (N.D. 1985).

The general provision of N.D.C.C. § 15.1-32-23 was enacted as part of the recodification of the education title of the Century Code in H.B. 1045, 2001 N.D. Leg. It was enacted later than H.B. 1465, 2001 N.D. Leg., which enacted N.D.C.C. § 15.1-18-05. However, if it was not the manifest legislative intent that N.D.C.C. § 15.1-32-23 should prevail, then the specific provision of N.D.C.C. § 15.1-18-05 will prevail.

The terminology of N.D.C.C. § 15.1-32-23 was initially enacted in 1997 and then modified in 1999, before its recodification in 2001 in the form quoted above. See 1997

N.D. Sess. Laws ch. 13, § 12; and 1999 N.D. Sess. Laws ch. 35, § 17. Therefore, aside from the fact that the objection and delayed implementation procedure found in N.D.C.C. § 15.1-32-23 has been in existence for five years, there is no manifest legislative intent that supports a conclusion that it was intended to prevail over sections 15.1-18-05 and 15.1-18-06 which provide for a new and unique special education strategist credential intended to aid school districts in supplying qualified teachers.¹ Hearing on H.B. 1465 Before the House Comm. on Education 2001 N.D. Leg. (Jan. 29) (Statement of Rep. Froelich, a sponsor of the bill).

It is therefore my opinion that in the absence of manifest legislative intent to make the general provisions of N.D.C.C. § 15.1-32-23 prevail, the conflict between the special provisions of section 15.1-18-05 is irreconcilable with the general provisions in N.D.C.C. § 15.1-32-23, and therefore, section 15.1-18-05 must be construed as an exception to the general provisions. It is my further opinion that the Department of Public Instruction may proceed with its adoption and implementation of the special education strategist credential required by N.D.C.C. § 15.1-18-05 irrespective of objections that may be

¹ In fact, legislative history for H.B. 1465, 2001 N.D. Leg. indicates recognition that the special education strategist credential would be available as quickly as possible. In the house education committee it was stated:

How certain are you that you are going to be able to implement this new credential in a timely fashion, would it be in place by the fall of 2001, or is this going to require additional course work by those people who are currently in the field, in one of these categories, get the strategist credential.

Hearing on H.B. 1465 Before the House Comm. on Education 2001 N.D. Leg. (Jan. 29) (Statement of Rep. Haas).

In the Senate Education Committee there was a discussion concerning changing “shall” to “may” with respect to the special education strategist credential. The minutes state that:

Senator Freborg stated he has a hard time with changing “shall” to “may” because this would require DPI to allow the districts to take up the option to create the credential and if the districts want it it is there. If a specific teacher wants it, it is there also.

Hearing on H.B. 1465 Before the Senate Comm. on Education 2001 N.D. Leg. (Mar. 14) (Statement of Sen. Freborg).

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made to changes in the special education teacher credentialing process under N.D.C.C. § 15.1-32-23.²

Sincerely,

Wayne Stenehjem
Attorney General

rel/tmb

² I was not asked to opine as to the constitutionality of N.D.C.C. § 15.1-32-23. However, the department may want to review the statute in light of the recent Supreme Court decision in Kelsh v. Jaeger, 641 N.W.2d 100 (N.D. 2002).